

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs June 19, 2007

RONNIE KERR v. GIL MATHIS, WARDEN

Direct Appeal from the Circuit Court for Davidson County
No. 06C-3361 Amanda McClendon, Judge

No. M2007-00363-CCA-R3-HC - Filed August 8, 2007

The petitioner, Ronnie Kerr, filed a petition for a writ of habeas corpus, alleging that the indictment underlying his conviction was void because it charged an offense committed outside the statute of limitation. The habeas corpus court dismissed the petition for failure to comply with procedural requirements. The petitioner now appeals. Upon our review of the record and the parties' briefs, we affirm the judgment of the habeas corpus court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

Ronnie Kerr, Nashville, Tennessee, Pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Rachel E. Willis, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

On June 4, 2001, the Marion County Grand Jury indicted the appellant on two counts of aggravated rape committed in 1985 against a victim less than thirteen years of age. On April 17, 2006, the petitioner pled guilty to one count of aggravated sexual battery with the remaining charge dismissed. At the guilty plea hearing, the State, without objection, amended the date of the offense to 1986.

On July 14, 2006, the petitioner filed in the Davidson County Circuit Court a petition for a writ of habeas corpus, which petition was assigned case number 06C-1866. The petition alleged that the indictment was void because the offense charged was committed outside the statute of limitation for the offense. On August 18, 2006, the Davidson County Circuit Court received from the

petitioner a “Motion for Determination of Status of Case” in which he asked for information concerning the status of his case. On August 29, 2006, the law clerk for Judge Marietta Shipley wrote a letter to the petitioner, informing him that he had failed to meet some procedural requirements when filing his petition. Specifically, the petitioner had failed to file a pauper’s oath, file an affidavit of his inability to pay, and make a partial payment of the filing fee as required by Tennessee Code Annotated section 41-21-807. The letter advised the petitioner that he had twenty days to comply with the procedural requirements or his petition would be dismissed.

The technical record on appeal reflects that at some point, the petitioner sent to the court a pauper’s oath and an affidavit regarding his inability to pay.¹ The technical record does not reflect any information as to payment. Regardless, on October 4, 2006, the Tennessee Court of Appeals received a letter addressed to Judge William Koch in which letter the petitioner stated:

The fact is, the Circuit Court has never[] acknowledged receipt of the Petition, except for the notice that it would be dismissed – and this was only after I made Motion to discover the status of the Writ.

I would ask that, if possible, you intervene in this matter either by transferring the Petition to the Court of Appeals or via Ordering the Circuit Court to act *instante*. The Petition has be[en] lying dormant for over 72 days as of this request.

Following the letter, the Court of Appeals issued an order on October 6, 2006, explaining that it would consider the letter as a petition for a writ of mandamus. The order stated that the petitioner’s letter “fails to demonstrate that requested relief will aid this court’s appellate jurisdiction.” Therefore, the order denied the petitioner the relief he requested. A mandate was issued by the Court of Appeals on December 12, 2006.

On November 9, 2006, the petitioner filed in the habeas corpus court another “Motion for Determination of Status of Case.” In the motion, the petitioner alleged that he had complied with the dictates of the August 29, 2006, letter written by Judge Shipley’s law clerk; specifically, he maintained that he had sent to the court a new pauper’s oath, an affidavit, and a partial payment of \$38.50 toward the filing fee. The petitioner requested “a Determination of the Status of his case as soon as the business of the Court will allow.” The habeas corpus court’s ultimate disposition of case number 06C-1866 is unclear from the record.

On December 22, 2006, the petitioner filed another petition for a writ of habeas corpus, which petition was assigned case number 06C-3361. This petition also alleged that the indictment was void because the offense charged was committed outside the statute of limitation for the offense. On January 3, 2007, the habeas corpus court filed an order stating that the petitioner had failed to

¹ The petitioner alleges that “[o]n September 13, 2006, the Circuit Court received a new Paupers Oath, Affidavit and partial payment of the filing fee, with a letter of explanation from the [petitioner].”

file an affidavit in compliance with Tennessee Code Annotated section 41-21-805 and failed to pay a partial filing fee as required by Tennessee Code Annotated section 41-21-807. The order provided that the petitioner had twenty days to comply with the requirements or “the case will be dismissed.”

On January 12, 2007, the petitioner filed an “Answer to Order to Comply and Motion for Court to Comply with Requirements of TCA § 29-21-101 Et. Seq.” In the answer, the petitioner detailed the history of his petitions for a writ of habeas corpus, beginning with the filing of the petition in case number 06C-1866. Also, in the document the petitioner explained:

[The petitioner] brought this case approximately six months ago. Since that time he has received only two communications from this Honorable Court – both Ordering Compliance but never acknowledging same – In fact, [the petitioner] has never been notified of it’s status, the change of Judges, receipt of money or documents, etc. Again, with the exception of the single letter from Judge Shipley’s Clerk and the Court Order being addressed herein[] the court has completely ignored the [petitioner’s] Petition for the Great Writ.

[The petitioner] avers that he has conscientiously and timely complied with the requirements of TCA § 41-21-801 ET. Seq. and all requirements of TCA § 29-21-101 ET. Seq., to the best of his abilities.

On January 25, 2007, the State filed a motion to dismiss the petition in case number 06C-3361. The State cited two grounds for the dismissal: (1) the petitioner had failed to attach a copy of the judgment forms and the indictment to his petition,² and (2) the petitioner failed to state a cognizable claim for habeas corpus relief. On January 31, 2007, the habeas corpus court dismissed the petition in case 06C-3361 because the petitioner failed to file an affidavit in compliance with Tennessee Code Annotated section 41-21-805 and failed to pay a partial filing fee as required by Tennessee Code Annotated section 41-21-807.³ The petitioner originally filed a notice of appeal with the Court of Appeals; however, on February 28, 2007, the Court of Appeals filed an order transferring the petitioner’s appeal to the Court of Criminal Appeals. On appeal, the petitioner contends that the petition was erroneously dismissed, arguing that he complied with all procedural requirements on case number 06C-1866 and that the habeas corpus court had erred by assigning a new case number to his original petition.

II. Analysis

² The petition in case number 06C-1866 included these documents.

³ At that time, the judge of the habeas corpus court was Judge Amanda McClendon.

Initially, we note that the determination of whether to grant habeas corpus relief is a question of law. Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007). As such, we will review the trial court's findings de novo without a presumption of correctness. Id. Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, § 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). However, "[s]uch relief is available only when it appears from the face of the judgment or the record of the proceedings that a trial court was without jurisdiction to sentence a defendant or that a defendant's sentence of imprisonment or other restraint has expired." Wyatt, 24 S.W.3d at 322; see also Tenn. Code Ann. § 29-21-101 (2000). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. Taylor, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting Taylor, 995 S.W.2d at 83).

Moreover, we note that "[w]ithout question, the procedural provisions of the habeas corpus statutes are mandatory and must be followed scrupulously." Archer v. State, 851 S.W.2d 157, 165 (Tenn. 1993). Specifically, Tennessee Code Annotated section 29-21-107 provides:

(a) Application for the writ shall be made by petition, signed either by the party for whose benefit it is intended, or some person on the petitioner's behalf, and verified by affidavit.

(b) The petition shall state:

(1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and, if unknown, describing the person with as much particularity as practicable;

(2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;

(3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and

(4) That it is first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure so to do.

Additionally, our code governs claims filed by inmates. Specifically, Tennessee Code Annotated section 41-21-805 (2000) provides:

(a) Any inmate who files a claim with an affidavit of inability to pay costs shall file a separate affidavit with the following information:

(1) A complete list of every lawsuit or claim previously filed by the inmate, without regard to whether the inmate was incarcerated at the time any claim or action was filed; and

....

(c) The affidavit must be accompanied by a current certified copy of the inmate's trust account statement.

Further, Tennessee Code Annotated section 41-21-807 (2000) provides:

(a) An inmate seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit required by § 41-21-805, shall submit a certified copy of the trust fund account statement, or the institutional equivalent, for the inmate for the six-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each facility at which the inmate is or was confined.

(b)(1) If an inmate brings a civil action or files an appeal in forma pauperis, the inmate shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of twenty percent (20%) of the greater of the average monthly:

(A) Deposits to the inmate's account; or

(B) Balance in the inmate's account for the six-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the inmate shall be required to make monthly payments of twenty percent (20%) of the preceding month's income credited to the inmate's account. The agency having custody of the inmate shall forward payments from the inmate's account to the clerk of the court each time the amount in the account exceeds ten dollars (\$10.00) until the filing fees are paid.

....

(4) In no event shall an inmate be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the inmate has no assets and no means by which to pay the initial partial filing fee.

In the case before us, we discern from the record that in response to the letter from the habeas corpus court, the petitioner attempted to comply with the procedural requirements for filing a habeas corpus petition. Moreover, it is readily apparent that the petitioner attempted to comply with Tennessee Code Annotated sections 41-21-405 and 41-21-407. The petitioner believed that the petition filed in case number 06C-3361 was merely a supplement to the original petition, case number 06C-1866, which supplement was filed because he was unable to see any action on the part of the court regarding that case. The technical record before us contains the requisite documents mandated under habeas corpus law and inmate filing law. Accordingly, we conclude that the trial court erred in dismissing the case on this basis.

However, our review of the record before us leads us to conclude that the dismissal was proper on another basis. The petitioner alleges that the indictment charged him with an offense that occurred beyond the statute of limitation; therefore, the trial court did not have the jurisdiction to enter a judgment against him. We disagree. First, we note that "[t]he principle is well-settled in Tennessee jurisprudence that the voluntary entry of an informed and counseled guilty plea constitutes an admission of all facts necessary to convict and waives all non-jurisdictional defects and constitutional irregularities which may have existed prior to the entry of the guilty plea." State v. Pettus, 986 S.W.2d 540, 542 (Tenn. 1999); see also Tenn. R. Crim. P. 12(b)(2); State v. Smith, 996 S.W.2d 845, 846-47 (Tenn. Crim. App. 1999). Our supreme court has previously explained that statutes of limitation are not jurisdictional but are in fact waivable by a defendant. State v. Pearson, 858 S.W.2d 879, 887 (Tenn. 1993). Accordingly, if any defect existed in the indictment because the offense charged occurred outside the statute of limitation, such a defect may be waived by a knowing an voluntary guilty plea. In order establish whether a waiver had occurred, the petitioner would be required to present additional proof outside the record, making his conviction voidable, not void. See Taylor, 995 S.W.2d at 83. Thus, the petitioner's claim would not be appropriate for habeas corpus relief.

Moreover, we note the State charged the petitioner with a violation of Tennessee Code Annotated section 39-2-603, namely the 1986 aggravated rape of a child under 13 years of age. Our

code provides that for offenses which were committed prior to November 1, 1989, the effective date of the 1989 Criminal Sentencing Reform Act, the statute of limitation to be applied is the one in effect at the time of the commission of the offense. Tenn. Code Ann. § 40-2-101(f) (2006). In 1986, aggravated rape was a Class X felony “punishable by imprisonment in the penitentiary for life or a period of not less than twenty (20) years.” Tenn. Code Ann. § 39-2-603(b) and (c) (1986) (repealed). The effective statute, Tennessee Code Annotated section 40-2-101(a) (1986), provided that “[a]ny person may be prosecuted, tried and punished for any offense punishable with death or by imprisonment in the penitentiary during life, at any time after the offense shall have been committed.” Accordingly, the appellant was not charged with an offense for which the statute of limitation had expired as the offense for which he was charged carried no statute of limitation. Accordingly, the petitioner did not allege grounds on which habeas corpus relief could be granted.

III. Conclusion

Finding no reversible error, we affirm the judgment of the habeas corpus court.

NORMA McGEE OGLE, JUDGE